IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Dr. Farooq Ahmed. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No. 195/2005
against the order dated 13-1-2005 passed
by the Addl. Sessions Judge No.2, Jodhpur,
in Criminal Revision No. 17/2004.

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Date of Order: October 04, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Varun Gupta, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

This criminal miscellaneous petition under Section 482 Cr.P.C. is directed against the order dated 13-1-2005 passed by the Additional Sessions Judge No.2, Jodhpur (for short, "the Revisional Court" hereinafter) in Criminal Revision Petition No. 17/2004, whereby the revision petition filed by the respondent State was allowed and the order dated 30-7-2004 passed by the Judicial Magistrate, Jodhpur (for short, "the trial Court" hereinafter) discharging the petitioner for the offence under Section 498-A, IPC was set aside and the matter was remanded to the trial Court to frame the charge for the offence under Section 498-A, IPC and proceed for the trial of the case.

I have heard learned counsel for the petitioner and the Public Prosecutor for the State. Carefully gone through the orders passed by the trial Court as well as the Revisional Court.

The trial Court discharged the petitioner only on the ground that there was no evidence that complainant Chandrakanta married to the present petitioner. The Revisional Court, on examination of the record, came to the conclusion that there is evidence, including the statement of complainant Chandrakanta that she married to the petitioner in the presence of reputed members of the society (Panch).

I have carefully gone through the statement of complainant Chandrakanta, wherein she has stated that earlier she was married to one Bheem Vaishnava; that marriage was subsequently dissolved in the year 1991 and thereafter, in village Dhelana, in the presence of reputed members of the society and the Panchas, she married to the present petitioner and started living with him as husband and wife.

At the initial stage, unless a contrary evidence is produced by the other party, there is sufficient ground to presume that complainant Chandrakanta married to the present petitioner at village Dhelana.

So far as the evidence of cruelty is concerned, in the statement of complainant Chandrakanta, there is prima facie evidence that the petitioner subjected her to cruelty and

harassment and, therefore, it cannot be said that the offence under Section 498-A, IPC is not attracted.

The trial Court discharged the petitioner only on the ground that there is no evidence that there is relation of husband and wife between the petitioner and the complainant. This finding of the trial Court appears to be contrary to the facts on record and in my view, the Revisional Court rightly set aside the conclusion arrived at by the trial Court and remanded the matter. In this view of the matter, I do not find any ground to interfere in the inherent jurisdiction. It cannot be said that the order impugned would result in serious miscarriage of justice or abuse of process of the Court.

The criminal miscellaneous petition is, therefore, dismissed. The stay petition also stands dismissed.

(H.R. PANWAR), J.

mcs